IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 290/2001
(Old No. 317/1992)

1- The State of U.P. through
Collector, Nainital.

2- The State of U.P through
Divisional Forest Officer,
Forest Training Centre,
Rampur Road, Haldwani,
Nainital.

3- The State of U.P. through
Conservator of Forest, Forestry
Training Institute, Rampur Road,
Haldwani, District Nainital …… Opp. Parties/Appellants

Versus

Dayal Shanker S/o Prem Giri,
R/o Loharlasal Malla, P.O. Katgharia,
Tehsil Haldwani,
District Nainital ….Claimant/Respondent.

Sri Bhupendra Singh, learned Standing Counsel for the appellants.
Sri. J.P. Joshi, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 12-06-2006

This Appeal has been preferred against the judgment and award dated 23-12-1991, passed by the Motor Accident Claim Tribunal/ Addl. District Judge, Nainital, in M.A.C.P. No. 119 of 1989, Dayal Shanker Vs. State of U.P., whereby the claim petition was allowed and Rs. 1,75,000/- was awarded compensation along with interest @ 12% per annum from the date of presentation of the claim petition till final payment, payable by the opposite parties/appellants.

2- Brief stated the facts of the case are that on 7-1-1989 the claimant Dayal Shanker was going to Pili Kothi from his house to attend the sports and he was walking in his extreme left side. At the same time a jeep bearing No. UTD 4192 came from opposite direction driven by its driver in a very rash, negligent and careless

manner and it suddenly swerved to its right and dashed against the claimant. Due to this accident the claimant sustained grievous injuries and he became unconscious and he was brought to Civil Hospital, Haldwani in the same jeep. Seeing the precarious condition and head injury of the claimant he was brought to All India Institute of Medical Sciences, New Delhi where he was admitted for treatment on 8-1-1989 and remained there up to 16-1-1989. According to the claimant due to the accident he got fracture on his thigh and his left and right legs were kept under traction and thereafter both the legs were plastered for 45 days. This plaster was a jacket plaster and then he was discharged on 3.2.89 with an advice to come after one month for check up and further treatment. The claimant was taken to A.I.M.S. on 5.3.1989 and the plaster was not opened as after the x-ray it was found that the bones had not yet united and was again advised to come after one month. It was also pleaded that he incurred an expenditure of Rs. 35,000/- on his treatment and still his treatment is going on. The claimant has filed the claim petition compensation of Rs. 10,00,000/-.

3- The opposite parties/appellants filed joint written statement pleading therein that the accident occurred due to the own negligence of the claimant. At the time of accident the claimant wanted to cross the road and due to his own fault he collided with the jeep.

4- On the pleadings of parties, the Tribunal framed relevant issues. The claimant in support of his claim produced P.W.1, Dr. J.S. Pangti, P.W.2, Kewala Nand Bhatt and P.W.3 Prem Giri and also filed various documents regarding his treatment. The Opposite Parties produced D.W.1. Ghana Nand Dani and D.W.2, Dev Singh.

5- The Tribunal on assessment of evidence on record awarded compensation to the tune of Rs. 1,75,000/- along with interest @ 12% per annum from the date of the claim petition till final payment, against the Opp. Parties/appellants.

6- Feeling aggrieved, the Opp. Parties/appellants have come in appeal before this Court on the ground that the Tribunal has awarded the excessive amount of compensation without proper assessment of evidence. It was also alleged that the accident had

occurred due to the own fault of the claimant/respondent while crossing the road and the appellants are not liable to pay any compensation.

7- The claimant/respondent also filed cross appeal for enhancement of the compensation amount on the ground that due to the injuries sustained by him he has been deprived of his education, a decent employment and inflicted a social disability hence the amount of compensation awarded by the Tribunal is too low.

8- We have heard the learned counsel for the parties and perused the record.

9- Learned counsel for the appellant has argued that there is no evidence available on the record which may suggest that the offending jeep in question has actually involved in the accident. It has also been submitted that the witnesses examined by the claimant infact were not present at the site of accident. It has also been argued that the accident took place on account of the own negligence of the claimant. The another argument which has been advanced by the learned counsel for the appellants is that the Motor Accident Claim Tribunal has not adopted the correct measures for awarding the compensation to the claimant and the amount awarded is on excessively higher side.

10- The record reveals that the claimant has produced an eye witness Kewala Nand Bhatt in order to show the factum of accident and this witness has stated that at the time of the accident he was going to Haldwani and as soon as he reached near Pili Kothi he saw that a boy was going ahead of him. He further deposed that the offending jeep No. UTD 4192 coming from the opposite direction in a rash and negligent manner hit the boy by coming on the wrong side. The jeep in question stopped 20 paces ahead and then the injured was taken to the hospital by the same jeep. This witness thereafter informed the father of the injured with regard to the accident. This witness has been cross-examined at length but nothing could be elicited from his preposition which may suggest that this witness is either telling lie or was not present at the scene of the occurrence. Moreover this witness has no animus or grudge

against the driver of the offending jeep. We, therefore, do not find any reason to disbelieve the testimony of this witness.

11- The witnesses produced by the appellants in support of their case firstly do not appear to be trustworthy as they are the interested and partisan witnesses and there are also material contradictions in their depositions. A suggestion was put to the O.P. W.2 Ghana Nand Dani who is Van Daroga, Ram Nagar that the departmental proceedings were initiated against the driver of the offending jeep and the driver was subsequently found guilty with the result he was terminated from the service. This witness in his answer has shown his ignorance about this aspect. Therefore, the Tribunal has rightly disbelieved the testimony of the witnesses produced by the appellants before the court below.

12- The another important aspect in this case is that a criminal case was initiated against the driver of the offending jeep before the court of Judicial Magistrate, Haldwani and in that criminal case the driver confessed his guilt. Therefore, on account of this aspect as well as taking into consideration the evidence adduced by the claimant, it is quite clear that the offending jeep was being driven rashly and negligently with the result the jeep hit the injured/claimant causing him grievous injuries on his person.

13- As far as the quantum of compensation is concerned, the evidence on record show that the claimant has produced Dr. J.S. Pangti who has proved the medical report as well as the paper by which the case of the claimant was referred for Delhi Hospital. This doctor has stated that when the claimant was brought to the Hospital, he was unconscious and his both the legs were broken. He has also stated that there was injury in the head of the claimant. The doctor suggested that the claimant had to be referred for Delhi as his treatment in the Hospital at Haldwani was not possible. Thereafter the claimant was taken to All India Medical Institute and he was admitted in Neurosurgery Department where his treatment continued for eight days. Thereafter he was referred to Orthopedic Department where his both the legs were plastered. This doctor has further deposed that after discharge the claimant was again called at Delhi on 6-3-1989 but it revealed that the bone was not correctly

joined. Thereafter again his legs were plastered but when his plaster was reopened again then it was found that the left leg of the claimant was shortened by two inches. The evidence of the doctor clearly suggests that the claimant has become disabled permanently. By shortening of leg the working capacity of the claimant has been affected for his entire life. The claimant will have a feeling throughout his life that there is a limping in his leg. The age of the claimant at the time of accident was only 15 years. Therefore, he has to suffer the pain and agony on account of the injuries sustained by him for his entire life and this pain and agony although cannot be compensated in terms of money but anyhow in order to award compensation the amount of Rs. 40,000/-, as has been awarded by the Tribunal, appears to be quite reasonable.

14- As far as the expenses incurred in the treatment of the claimant is concerned, the evidence on record show that the amount of Rs. 35,000/- has been invested in the treatment of the claimant. This amount also appears to be just and adequate. The claimant had to be shifted to All India Medical Institute where his treatment continued in Neurosurgery Department as well as Orthopedic Department for several days. The claimant had to again visit the All India Medical Institute, New Delhi and subsequently he became disabled. The amount of Rs. 35,000/- under the head of expenses incurred in the medical treatment also appears to be justified. The Tribunal has taken into account this aspect that the life of the claimant/injured has become curse on account of the disability suffered by him. It is but natural that a person whose one of the leg is shortened by 2 inches will not be able to perform his routine work with full efficiency. The future expectancy of life would also be affected as there will be a difficulty with the claimant to get the proper job of his choice and certainly this will also affect his education as well as future career. To our mind the amount of Rs. One lac awarded as compensation on account of the disability suffered by the claimant/injured appears to be just and adequate.

15- On the basis of the assessment of evidence on record we come to the conclusion that the impugned judgment and award

dated 23-12-1991, passed by M.A.C.T./Addl. District Judge, Nainital in MACP No. 119 of 1989, appears to be justified and does not require any interference.

16- The appeal lacks merit and is liable to be dismissed.

17- Accordingly the appeal filed by the State/appellant is dismissed.

18- As we have already discussed above that the amount of compensation awarded in favour of the claimant/injured is just, proper and adequate, hence we are not inclined to interfere in the impugned judgment and award. We do not find any reason to enhance the amount of compensation.

19- The cross appeal filed by the claimant also lacks merit and is dismissed accordingly.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB